



The Scottish Parliament  
Pàrlamaid na h-Alba

**Equalities and Human Rights Committee**

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*Via email only*

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Dear Sir Peter Gross,

**The Independent Human Rights Act Review (IHRAR)**

The IHRAR has invited views on the relationship between the domestic courts and the European Court of Human Rights, and the impact of the Human Rights Act 1998 (HRA) on the relationship between the judiciary, the executive and the legislature.

Please find attached the views of the Equalities and Human Rights Committee. The Committee has taken the opportunity to respond in more general terms highlighting the changing landscape of human rights in Scotland.

If you have any questions, please contact the Clerks on the above contact details.

Yours sincerely,

Ruth Maguire MSP  
**Convener**

## **The Scottish Parliament's Equalities and Human Rights Committee**

### **Human rights framework and culture in Scotland**

#### *The Scottish Parliament*

In 2016, the Equalities Committee remit was extended to include human rights. Prior to this the Justice Committee took lead responsibility for human rights matters in the Scottish Parliament.

There has been growing international consensus that parliaments must take a more active role in the promotion and protection of human rights. Parliaments have a central role as 'guarantors' of human rights, because they have the power to legislate, hold national debates, and scrutinise the work of government.

The Independent Commission for Parliamentary Reform's report on the Scottish Parliament asked the Equalities and Human Rights Committee to consider the proposals made to it on the Scottish Parliament becoming an effective guarantor of human rights.

Following an inquiry into human rights and the Scottish Parliament, the Committee published its report [Getting Rights Right](#) on 26 November 2018.

The Committee called on the Scottish Parliament to be an international leader on human rights. It made 40 recommendations, setting out a roadmap for the Scottish Parliament and the Scottish Government.

The Equalities and Human Rights Committee is committed to upholding its position as a guarantor of human rights in Scotland and developing a human rights culture within the Parliament and would not wish to see any regression of rights. Much of the work the Committee has undertaken this Parliamentary session has been on raising awareness of rights in practice and strengthening debate on human rights standards and principles.

Participation is a guiding principle in human rights and we hope that rights organisations in Scotland will also take the opportunity to respond to the Independent Review.

#### *The Scottish Government*

The Scottish Government has also committed to developing a new framework for human rights.

The First Minister's Advisory Group on Human Rights Leadership was set up to make [recommendations](#) on how Scotland can lead by example in the field of human rights. It met for the first time on 17 January 2018 and reported on 10 December 2018.

Like the Committee, a key concern for the Advisory Group was what might happen to the human rights landscape after Brexit. The Group used three guiding principles to develop their recommendations:

- non-regression from the rights currently guaranteed by membership of the European Union
- keeping pace with future rights developments within the European Union
- continuing to demonstrate leadership in human rights.

Its principal recommendation was the creation of a new statutory human rights framework for Scotland. This would include:

- civil and political rights, restated in abbreviated form from the Human Rights Act 1998
- economic, social and cultural rights, such as the right to adequate housing and the right to adequate food
- an environmental right, right to a healthy environment
- rights belonging to different groups, such as women, disabled people, older people and LGBT people.

This proposal would involve a new Act of the Scottish Parliament incorporating rights from United Nations and other human rights treaties into Scots law. The Advisory Group proposed that the Act could be legislated for at the start of the next term of the Parliament in 2021.

The [Programme for Government 2020-21](#) also stated that work with the National Taskforce would continue, and with the aim of delivering:

“a radical blueprint for human rights legislation covering all areas of devolved responsibility. This will include how best to take forward our commitment to incorporate the UN Convention on the Elimination of All Forms of Discrimination against Women into domestic legislation. We will also actively consider the incorporation of the UN Convention on the Rights of Disabled People and the UN Convention on Racial Discrimination, working closely with key stakeholders in these sectors”.

### **United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill**

A recent development in the human rights landscape is the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#), introduced on 1 September 2020 by the Scottish Government. This would incorporate the UN Convention on the Rights of the Child into Scots law. The approach taken in the Bill is similar to the framework set out in the Human Rights Act 1998 and in the Scotland Act 1998, although there are some differences. If the legislation successfully completes its passage through the Scottish Parliament, Scotland will be the first country in the UK to incorporate the UNCRC. The Equalities and Human Rights Committee has considered the

Bill at Stage 1 and 2. The Bill will now progress to Stage 3 where it will be considered by the Parliament as a whole.

### **The Scotland Act 1998 and the HRA**

The Scotland Act 1998 requires that all Scottish Parliament legislation must be compatible with the rights set out in the Human Rights Act 1998, which are derived from the European Convention on Human Rights.

The Scottish Parliament also has the power, subject to the usual restraints on competence, to observe and implement international obligations, including international human rights obligations.

The Committee would be concerned about any changes to the Human Rights Act 1998 that eroded any rights or risked the relationship with the Scotland Act 1998.

The Committee asks you to respectfully take this into consideration in reviewing the HRA.